

7. (Amended) The napkin assembly of claim 1 wherein the T/S ratio is greater than 0.03.
8. (Amended) The napkin assembly of claim 1 wherein the tab strength is greater than 30 gf.

REMARKS

Applicants note the acknowledgement of Applicants' claim for priority, and the requirement for Formal Drawings upon allowance of the case as indicated in the Office Action of December 24, 2002.

Applicants respectfully request reconsideration of the allowability of the claims in the present application. The present amendment is presented to place the application in condition for allowance, or alternatively in a better form for appeal in accordance with MPEP §706.07(e).

Applicants submit that the present amendment raises no new issues in the case.

In the Office Action, claims 1-8 were rejected under 35 U.S.C. §112, second paragraph, for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Specifically, claims 1, 4, 6, 7, and 8 were rejected for using the word "about" in claiming the basis weight, machine direction tensile, T/S ratio, and tab strength.

Applicants respectfully disagree with the Examiner's §112 rejection based on use of "about." The Examiner implies that a double standard exists for evaluating indefiniteness depending on whether the proceeding is interparte or exparte, or whether an issued patent or pending application is being evaluated. No such "double standard" exists in the law, and the cases cited by the Examiner cannot reasonably be interpreted to support such a proposition. The Federal Circuit Court of Appeals is the authority on this issue, and has consistently held that use

of the term "about" does not render claims indefinite. See Eiselstein v. Frank, 34 USPQ2d 1467 (Fed. Cir. 1995) (Reversing the Board of Patent Appeals and holding the term "about" definite under §112).

However, solely in order to expedite prosecution of the application, Applicants have amended claims 1,4,6,7 and 8 to delete the term "about." Such Amendment should not be taken as an acquiescence in the Examiner's rejection, but merely as an effort to further prosecution on the merits.

Also in the Office Action of December 24, 2002, claims 1 and 6-8 were rejected under 35 U.S.C. §102 (b) as being anticipated by Lloyd (EP 0302382 A1).

Further, claims 1, 2, 4, and 6-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Young (U.S. Patent No. 5,642,835).

Additionally, claims 1, 4, and 5-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Everhart (U.S. Patent No. 5,389,202).

Claims 1 and 4-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Cook (U.S. Patent No. 5,242,057).

Also, claims 1, 3, 4, and 6-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Dwiggins (U.S. Patent No. 6,033,761).

Applicants respectfully submit that amended claim 1 is not anticipated by Lloyd. Lloyd does not disclose a napkin assembly that has a first and second napkin sheet each having a plurality of folds where all of the folds are parallel to one another.

Lloyd is directed towards a tissue carton that has sheets to be removed which are less likely to be torn as they are dispensed, and which provide for additional flexibility in the design

of the tissue carton (see Lloyd at page 2, lines 14 and 15). The tissue configuration of Lloyd is said to be advantageous over conventional tissue configurations in that the Lloyd configuration provides for at least double the amount of tissue in the same sized carton as compared to conventional configurations (see Lloyd at page 2, lines 33-36). In order to accomplish the desired resistance to tearing and space savings, the tissues of Lloyd have a folding line 22 parallel to the machine direction of the tissue sheet (see Lloyd at page 3, line 39; and Fig. 2). Additionally, the tissue sheets of Lloyd are provided with an interfolding line 32 that is perpendicular to the folding line 22 (see Lloyd at page 3, lines 39-41; and Fig. 2). It is therefore the case that Lloyd specifically teaches towards a tissue sheet configuration where the sheet has folds that are perpendicular to one another (see also claims 1 and 5 of Lloyd).

Claim 1 calls for a structure that is essentially opposite from the structure disclosed in Lloyd. Claim 1 calls for the first napkin sheet to have a plurality of folds that are all parallel to one another, and the second napkin sheet to have a plurality of folds where all of the folds are parallel to one another. This structure is not disclosed in Lloyd and in fact is specifically disfavored in Lloyd which calls for perpendicular folds. It would not have been obvious to one skilled in the art to modify Lloyd in order to arrive at Applicants' invention as claimed in claim 1 because Lloyd specifically mandates the use of perpendicular folds in order to have a resulting tissue sheet with folds in both the cross direction and machine direction of the tissue sheet to obtain a tissue sheet that has increased pull resistance and better spacing properties. Elimination of the perpendicular folds would completely frustrate the design as called for in Lloyd and such modification would not be obvious to one skilled in the art because Lloyd clearly teaches in an opposite direction. As such, Applicants respectfully submit that amended independent claim 1

defines over Lloyd.

As stated, claims 1, 2, 4, and 6-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Young. Specifically, Young was cited against claim 2 for disclosing a first member integrally formed with a second member.

Applicants submit that claim 1 defines over the combination of Lloyd and Young. Young discloses a plurality of ribbons that are overlapped in side by side relationship, folded into a stack of interleaved ribbons, and then cut into blocks of individual interleaved sheets (see Young at column 7, lines 53-56). It would not have been obvious to one skilled in the art to take the interleaved sheets of Young and incorporate these sheets into Lloyd because doing so would produce a resulting sheet configuration that does not have perpendicular folds, as explicitly taught by Lloyd. Young discloses separate overlapping ribbons, whereas Lloyd discloses folds that are perpendicular in orientation. Removing the perpendicular folds and substituting them with the overlapping ribbons of Young would produce a design that is explicitly disfavored in the teachings of Lloyd. As such, this combination of references would not be obvious to one skilled in the art. Therefore, Applicants respectfully submit that claim 1 defines over the combination of Lloyd and Young.

As stated, claims 1, 4, and 5-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Everhart. Everhart was applied, particularly to claim 5, for disclosing napkins that are comprised of pulp fibers. Respectfully, Applicants submit that claim 1 defines over the combination of Lloyd and Everhart for essentially the same reasons as discussed above with respect to Lloyd.

As stated, claims 1 and 4-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable

over Lloyd in view of Cook. Cook discloses a toilet seat cover 200 that has longitudinally extending fold lines 220 and laterally extending fold lines 230 (see Cook at column 9, lines 42-43; and Fig. 7). As such, the fold lines in Cook are perpendicular, as are the fold lines in Lloyd. Therefore, if one skilled in the art were to combine these references, the resulting design would be a tissue sheet configuration that has perpendicular fold lines. As such, both references teach towards perpendicular fold lines, and teach away from a first napkin sheet with a plurality of folds that are all parallel to one another and a second napkin sheet with a plurality of folds that are all parallel to one another. As such, it would not have been obvious to one skilled in the art to modify Lloyd in view of Cook in order to arrive at Applicants' invention as claimed in claim 1 because both references teach towards perpendicular fold lines. As such, Applicants respectfully submit that claim 1 defines over the combination of Lloyd and Cook.

Also as stated in the Office Action, claims 1, 3, 4, and 6-8 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Lloyd in view of Dwiggins. Specifically, Dwiggins was cited for the proposition of disclosing a stack of 500 napkins. Applicants respectfully submit that claim 1 is patentable over the combination of Lloyd and Dwiggins in that a combination of these references does not disclose a napkin assembly with a first napkin sheet that has a plurality of folds where all of the folds are parallel to one another, and a second napkin sheet that has a plurality of folds where all of the folds are parallel to one another. Again, it would not have been obvious for one skilled in the art to provide such a napkin assembly in view of Lloyd and Dwiggins because Lloyd specifically teaches towards perpendicular fold lines, and removing this feature from Lloyd would produce a resulting design that goes completely against the entire purpose of Lloyd. Such a modification of Lloyd is unobvious to one skilled in the art, and

Applicants respectfully submit that claim 1 defines over the combination of Lloyd and Dwiggins.

Therefore, Applicants respectfully submit that independent claim 1 is in proper condition for allowance and that all claims which depend directly or indirectly from independent claim 1 are also in condition for allowance (2-8). Their rejections being made moot due to the allowance of independent claim 1.

Applicants respectfully submit that all pending claims, as now amended, are in condition for allowance. Favorable action thereon is respectfully requested.

The Examiner is encouraged to contact the undersigned at his convenience to resolve any remaining issues, and Applicants' attorney welcomes the Examiner's recommendations in order to solve any such issues.

Respectfully submitted,

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Amended Claims for U.S. Serial No. 09/776,395 (Attorney Docket No. AFH13782.1)

1. (Twice Amended) A napkin assembly for a dispenser, the napkin assembly comprising:

a first continuous napkin sheet further comprising a plurality of napkins wherein each napkin has a basis weight from [about] 20 gsm to [about] 40 gsm and is connected to an adjacent napkin in series by a plurality of tabs, the first napkin sheet having a plurality of folds where all of the folds are parallel to one another;

a second continuous napkin sheet further comprising a plurality of napkins wherein each napkin has a basis weight from [about] 20 gsm to [about] 40 gsm and is connected to an adjacent napkin in series by a plurality of tabs, the second napkin sheet having a plurality of folds where all of the folds are parallel to one another, the second napkin sheet being positioned proximate to the first napkin sheet in an offset relation so that the first and second napkin sheets are formed into a nested configuration for dispensing.

2. (Amended) The napkin assembly of claim 1 wherein each napkin of the first and second napkin sheets further comprises a first member integrally formed with a second member forming one of the folds of the plurality of folds between the first and second members; and

at least one napkin from the first napkin sheet terminates at about the fold of a respective napkin from the second napkin sheet.

4. (Amended) The napkin assembly of claim 1 wherein the napkin basis weight is [about] 30 gsm.

6. (Amended) The napkin assembly of claim 1 wherein the machine direction tensile is greater than [about] 2000 gr.

7. (Amended) The napkin assembly of claim 1 wherein the T/S ratio is greater than [about] 0.03.

8. (Amended) The napkin assembly of claim 1 wherein the tab strength is greater than [about] 30 gr.